

PLAINTIFF, HAYDEN SCOTT ROSE'S
DEPOSITION (PAGES CITED)

1 not current. Did I read that correctly?

2 A. You did.

3 (Whereupon, Rose Deposition Exhibit No. 3 was
4 presented to the witness for identification.)

5 BY MS. BARANYAI:

6 Q. Okay. Can you do me a favor and pull up -- it
7 will be Exhibit R, which is just the second attachment that
8 I had sent to Mr. Perry. It is a copy of what I believe to
9 be the Google review.

10 A. Okay. I pulled it up.

11 Q. Okay. Can you just take a quick look at that
12 real quick and let me know if that is an accurate
13 representation of the review?

14 A. It appears to be.

15 Q. Okay. In response to your review, CAM indicated
16 that you had failed to pay the special assessment for deck
17 repairs as assessed by the board of directors to all owners
18 with decks. Is that statement true?

19 A. Is the statement that CAM made true, or is your
20 reading of it correct?

21 Q. Is the statement that CAM made true, that you
22 have failed to pay the Presque Isle special assessment for
23 deck repairs as assessed by the board of directors?

24 A. I'm not sure exactly if that would qualify as an

1 assessment. It is true that I failed to pay it.

2 Q. Okay. Their second -- No. 2 where they write
3 "Deck repairs were completed throughout the community, not
4 just your unit," is that statement true?

5 A. I don't have personal knowledge. I believe that
6 they did it on maybe five or six decks.

7 Q. I'm sorry. You broke up a little bit. You did
8 say you believe they were doing work on five or six decks?

9 A. Correct.

10 Q. Okay. Thank you. No. 3. It says "Your account
11 is currently with the attorney for collections pursuant to
12 the board of directors collection policy." Is that
13 statement true?

14 MR. PERRY: Objection. Calls for speculation.

15 THE WITNESS: It was true that my account was
16 with the attorney for collections. I'm not sure on the rest
17 of the statement.

18 BY MS. BARANYAI:

19 Q. Okay. No. 4 says "Because you are in
20 collections, the association website account and payment
21 section is unavailable to you." Is that statement true?

22 MR. PERRY: Again, it's speculation.

23 THE WITNESS: I'm not sure of the reason that
24 they disabled my website services. That was their

ATTORNEY MICHAEL GANLEY'S
DEPOSITION (PAGES CITED)

1 **A Yes.**

2 **Q All right. "The lien for each unit as**
3 described in Paragraph 9 above shall be based on the
4 percentage share in common areas as described in
5 Paragraph 7 and 8 above." Did I read that accurately?

6 **A Yes.**

7 **Q That controls -- would you say that's the**
8 controlling law on this?

9 MR. RACINE: Objection.

10 **THE WITNESS: Well, I mean, it's not a**
11 **law. It's ---**

12 **Q (Mr. Perry) Well, you're right. I misstated.**
13 Does this Declaration control?

14 **A Does the Declaration control for Presque Isle**
15 **Villas?**

16 **Q Yeah. How Presque Isle would file a lien, the**
17 actions that Presque Isle would take in regards to Mr.
18 Rose concerning the deck repairs and the liens to put
19 on the condominium for the deck repair, all of the
20 things that Presque Isle and CAM are doing here
21 regarding these repairs and the liens -- would you say
22 that this Declaration controls their action?

23 **A Yes.**

24 MR. RACINE: Objection.

25 **THE WITNESS: Well, objection, but yeah.**

1 **The Declaration, in conjunction with federal statutes**
2 **and the state statutes, by-laws, rules and regulations,**
3 **do control Presque Isle Villas.**

4 MR. PERRY: Thank you. And Russ, just
5 to clarify, what was the objection?

6 MR. RACINE: I think your question
7 was ---

8 MR. PERRY: I know it was terribly
9 worded. I know that, and I'm sorry.

10 MR. RACINE: That was basically it. I
11 mean, I think the witness's answer demonstrated his
12 comprehension of my objection, and so I think it's
13 fine.

14 MR. PERRY: Thank you. Now we're going
15 to go to Exhibit D.

16 (DEPOSITION EXHIBIT
17 NUMBER 11 WAS MARKED
18 FOR IDENTIFICATION)

19 MR. PERRY: Have we gotten everything
20 in, Madam Reporter? Is there -- are there any
21 documents that are hanging out there? Thank you.

22 THE COURT REPORTER: We're all good.

23 Q (Mr. Perry) All right. So Exhibit D will be
24 the next one entered into evidence here -- into the
25 record. So can you see that December 15, 2020 letter?

1 **A No.**

2 MR. PERRY: Thank you. So now we're
3 going to pull up Exhibit C.

4 (DEPOSITION EXHIBIT
5 NUMBER 9 WAS MARKED
6 FOR IDENTIFICATION)

7 Q (Mr. Perry) Can you see it?

8 **A Yes.**

9 Q Do you recognize that as a true and accurate
10 copy of the Declaration of Condominium? And you can
11 scroll through if you need to.

12 **A Yes.**

13 Q All right. So let's go to Section 5, second
14 paragraph. You know what, I'm sorry. It should be
15 Section 6. Go to Section 6. Now, I'm going to start
16 reading, and if you can read along with me -- right
17 there, the beginning of Section 6.

18 "Limited Common Areas and Facilities shall
19 mean and include those common areas and facilities
20 reserved for use by a certain Unit or Units to the
21 exclusion of other Units, including any deck, porch,
22 patio, courtyard, balcony, foyer or carriage -- of
23 carriage units, rear yard, driveway, HVAC unit and/or
24 storage room appurtenant to such of the Units as are
25 shown on the Plans, or any assigned garage or assigned

1 storage room." Did I read that accurately -- that part
2 of it?

3 **A Yes.**

4 Q So is any deck included in the definition of
5 limited common areas and facilities?

6 **A Yes, deck is included in the definition of**
7 **limited common areas and facilities.**

8 Q In fact, does it say, "Any deck"?

9 **A Any deck, yes.**

10 Q Thank you, sir. Would Mr. Rose's deck be
11 included in that?

12 **A Yes.**

13 Q Does it continue by saying -- let's see,
14 cleanliness. We're going to go down to the word --
15 "The cleanliness." If you look at the tenth line down,
16 see where it says, "The cleanliness" on the far left?

17 **A Yes.**

18 Q I'll read. "The cleanliness and orderliness
19 of the Limited Common Areas and Facilities shall be the
20 responsibility of the individual Unit Owner, but the
21 responsibility for maintaining, painting, repair and
22 replacement thereof, together with control over the
23 exterior decoration of the same, shall be and remain
24 with the Association, but each Unit Owner shall be
25 responsible for repair maintenance of that Unit's HVAC

1 Q (Mr. Perry) All right. Thank you. Does the
2 letter state that, "The association has the authority
3 to have the work done and bill the owner. \$4,900
4 estimate provided"? I'll direct your attention to the
5 bolded paragraph at the top right, under, "Dear Hayden
6 Scott Rose."

7 A And I'm sorry, now -- now that I've been
8 redirected to that paragraph in the letter, can you
9 repeat your question?

10 Q Does the assoc -- does the letter state that,
11 "The association has the authority to have the work
12 done and bill the owner. \$4,900 estimate provided"?

13 A I mean, that's what it says on there. "The
14 association has the authority to have the work done and
15 bill the owner." "\$4,900 estimate provided."

16 Q Thank you. Did CAM or Presque have the
17 authority to do that?

18 A I -- my argument would be yes. I mean, there
19 is a colorable argument that they have that authority.

20 Q All right. So again, for Question 30 -- and
21 you can look at it or trust me to read it accurately.
22 The claim was, "On March 7, 2019, BHS informed the
23 other Defendants by letter that Presque was responsible
24 for paying for any work on the building's gutter and
25 exterior walls."

1 **THE WITNESS: I'm sorry. I'm going to**
2 **need you to rephrase.**

3 Q (Mr. Perry) Well, so I had asked, "Did you
4 advise," and you said, "I don't think I was ever
5 asked." So if you weren't asked, would you agree you
6 didn't advise, or would you say maybe you did and don't
7 remember?

8 **A If I -- I'm sorry. It's kind of a compound**
9 **question.**

10 Q It is a bit of a compound question. So we can
11 back up. Let's start from square one again.

12 **A Yes, if you wouldn't mind.**

13 Q All right. Did you advise Presque that the
14 debt was valid and could be collected? And when I say
15 "debt," obviously I mean the debt that's relevant to
16 the claims that we're making. As attorneys, I'm kind
17 of skipping some basic facts, and maybe I shouldn't.

18 So the debt we're talking about is the debt
19 -- the assessment for the deck repairs and the
20 associated collection fees and attorney's fees and all
21 the fees that went -- developed from the deck repairs.
22 When I say "debt," that's what I'm talking about today.
23 So with that understanding, did you advise Presque that
24 the debt was valid and could be collected?

25 **A I do not believe I received the question from**

1 Presque in that exact manner, whether it was valid and
2 could be collected. My standard response, when I was
3 asked whether the amounts could be added to the ledger,
4 is that there's ambiguities both ways. That it could
5 be collected -- a judge could find it collectible. A
6 judge could also find it not collectible. But there is
7 a colorable argument that, yes, number one, it is a
8 valid debt. And there is a colorable argument that,
9 yes, it can be collected in a like manner as an
10 assessment.

11 Q Thank you. What steps did you take to collect
12 the debt?

13 A We ---

14 MR. RACINE: Objection.

15 MR. PERRY: Go ahead.

16 THE WITNESS: Should I go ahead and
17 proceed?

18 MR. RACINE: Yeah, I'm sorry.

19 THE WITNESS: Sure. We originally
20 received the account emailed to us by Community
21 Association Management. We received a directive from
22 Community Association Management to file a lien for the
23 balance that was stated in the ledger. We had filed a
24 lien in the matter, and there was correspondence with
25 Mr. Rose. We were later directed by the Association --

1 **A** **Okay. Section 6 of the Declaration defines**
2 **decks as limited common areas or facilities, which is**
3 **accurate. And that 47C-3-115(c) (1) provides ---**

4 **Q** I'm sorry, let me stop you for a second. I
5 don't want you to have to answer more than I actually
6 asked.

7 **A** **Okay.**

8 **Q** Just for that second sentence there. "He has
9 confirmed that the Association has the authority to
10 dispatch a vendor. However, the owner is responsible
11 for the cost of limited common element expenses." So I
12 was just asking what they mean by that. And if you
13 were explaining what they mean by that, then I
14 understand. I'll let you go, but I just didn't want
15 you to have to say more than you needed to say.

16 **A** **Okay. I mean, it appears that it's saying**
17 **that the Association is responsible to perform the**
18 **maintenance, but the cost would be billed back to the**
19 **owner.**

20 **Q** Okay. Did you advise Mr. -- did you advise
21 Presque that Mr. Rose would have to pay for the
22 repairs?

23 **A** **It's -- what I'd advise Presque is that**
24 **there's an ambiguity in the Declaration. Typically,**
25 **limited common elements are the financial**



1 responsibility of the homeowner. The Association
2 performs the repairs, bills those limited common
3 elements back to the homeowner. There is a colorable
4 argument that, under the Condominium Act -- that since
5 the decks are identified as a limited common area under
6 the Declaration, that the cost for the repair of those
7 limited common areas are the responsibility of the
8 owner.

9 Q Of the individual owners? Is that ---

10 A Correct.

11 Q --- what you're saying? At any point, did you
12 tell your client, "This lawsuit is not worth it"? And,
13 "It's" ---

14 MR. RACINE: Objection.

15 Q (Mr. Perry) --- "only \$7,000, that maybe we
16 shouldn't go into all this expense of legal fees and
17 all this over a \$7,000 deck where you don't really know
18 who should be paying for it"?

19 A I ---

20 MR. RACINE: Objection.

21 MR. PERRY: Well, you asked for
22 attorney's fees, so I'm going to ask that question.

23 THE WITNESS: I'm sorry, I -- can you
24 clarify? I'm sorry.

25 Q (Mr. Perry) The counterclaim has asked for



1 **A I would provide options.**

2 MS. BARANYAI: Okay. Thank you. Sorry,
3 that's all I've got, Russ.

4 MR. RACINE: All right. Hold on one
5 moment. Actually, we'll reserve all our questions for
6 trial, so I have no questions. Shane, you're on mute.

7 MR. PERRY: Thanks, sorry.

8 **FURTHER EXAMINATION**

9 **BY MR. PERRY:**

10 Q I just have one redirect. Did Presque follow
11 your advice in this case?

12 MR. RACINE: Objection.

13 MR. PERRY: They waived privilege. I
14 don't know if that's a privilege objection or what the
15 objection is.

16 MR. RACINE: I mean, over the years, he
17 must have given a lot of advice. I think you maybe
18 need to narrow ---

19 MR. PERRY: Are you answering for him?

20 MR. RACINE: No, but you asked about my
21 objection, so.

22 Q (Mr. Perry) All right. So let me ask you
23 this: did Presque follow your advice on whether or not
24 to collect this debt?

25 **A Well, I mean, what I did is I provided the**

1 options to them where for -- that there is a colorable
2 argument that these amounts can be assessed to Mr.
3 Rose, but there is a risk with that and there could be
4 potential liability down the line. So it was less
5 about following a directive. I'll put it like this: I
6 did not provide a directive. There wasn't an option
7 there that was provided along with certain color as to
8 potential benefits and consequence of that option.

9 Q Has Presque noticed a possible malpractice
10 claim in this?

11 MR. RACINE: Objection.

12 MR. PERRY: What's the objection?

13 MR. RACINE: Well, it's not under the
14 topics of the 30(b)(6). It's outside the scope.

15 MR. PERRY: I'll ask anyway.

16 Q (Mr. Perry) Has Presque noticed BHS about a
17 possible malpractice claim dealing with these facts in
18 the suit?

19 MR. RACINE: Objection.

20 MR. PERRY: You can answer.

21 MR. RACINE: If you know.

22 **THE WITNESS: So far as I'm aware, no.**

23 MR. PERRY: All right. Thank you.

24 MR. RACINE: Everybody done?

25 MR. PERRY: Yeah, we're done.

1 **regarding such an interpretation or not."**

2 Q As a 30(b)(6) witness, you understand that you
3 are supposed to testify as to what the company was
4 thinking -- what BHS was thinking at the time, and how
5 it felt about this situation. Do you understand that?

6 A **That is correct.**

7 Q Okay. So what was BHS trying to tell the
8 client -- my client, Mr. Rose, about what was going to
9 happen if he didn't pay?

10 A **What we were trying to -- excuse me. What we**
11 **were trying to say is that per Section 9 of the**
12 **Declaration, as well as the General Statutes, the**
13 **regular and special assessments constitute a lien and**
14 **that the HOA can pursue a claim of lien or a**
15 **foreclosure of the property. That is what we are**
16 **trying to communicate.**

17 Q So they have the power to do that?

18 A **That they can pursue a claim.**

19 Q Sure. And what does it say -- tell him to do
20 to avoid that claim?

21 A **Submit payment of the amount owed to the HOA.**

22 Q Does it say he could do anything else to avoid
23 the lien?

24 A **It does not.**

25 Q Does it even say, "You need to pay whether you

1 Q Let's go to the document that says
2 "2021.6.22."

3 A Yes.

4 (DEPOSITION EXHIBIT
5 NUMBER 13 WAS MARKED
6 FOR IDENTIFICATION)

7 Q (Mr. Perry) The Bagwell Holt collection note.
8 You can see that?

9 A Correct.

10 Q Okay. And do you recognize that?

11 A Yes.

12 Q Now, the third paragraph -- well, I'll just
13 read the third paragraph. "While it is understood that
14 your personal" -- well, you know what, I'm -- strike
15 that.

16 I don't want to read the whole thing. I'm
17 just going to start at the Board. "The Board intends
18 to pursue" -- follow along and let me know if you don't
19 see it. "The Board intends to pursue collection of any
20 assessment to your unit, in the event such assessments
21 are not paid in a timely fashion. Per Section 9 of the
22 Declaration, as well as the NC Gen. Stat. Section 47C-
23 3-116, the regular and special assessments of the HOA
24 constitute a lien on your property.

25 "The HOA can pursue a claim of lien or a

1 foreclosure of the property to secure any debt that is
2 owed. If you wish to avoid the HOA's claiming of a
3 lien on your property and/or the foreclosure process,
4 you may submit payment of the amount owed to the HOA,
5 whether you maintain a protest regarding such an
6 interpretation or not. The Board will have Pro Fixer
7 contact you to schedule work on your unit. Thank you."
8 Did I read that accurately?

9 **A Yes.**

10 Q All right. Is that a threat of foreclosure?

11 MR. RACINE: Objection.

12 MR. PERRY: What's the objection?

13 MR. RACINE: I think you need to define
14 "threat" a little more accurately. I mean, it states
15 what it states. But ---

16 MR. PERRY: Are you answering for him?

17 MR. RACINE: No, sorry. Objection.

18 Please answer if you can.

19 Q (Mr. Perry) Yes. Is that a threat of
20 foreclosure?

21 **A I would not necessarily call it a threat.**
22 **It's a statement. It is what ---**

23 Q Okay.

24 **A --- it says.**

25 Q All right. Is it a promise?



1 A If he was not responsible for the deck repair,
2 then the HOA performed the repair -- excuse me. If he
3 was not responsible for the cost of the repair, the HOA
4 performed the repair and billed the cost back to him,
5 then those costs should not appear on his ledger.

6 Q So would you agree they wouldn't be able to
7 foreclose on that?

8 A Not on the cost of those repairs. They
9 wouldn't be able to file a lien, and then the HOA would
10 not be able to foreclose on that lien.

11 Q Or file ---

12 A But again ---

13 Q I'm sorry.

14 A That's presupposing that that language ---

15 Q Sure.

16 A --- is in the Declaration.

17 Q And they would not be able to collect legal
18 fines and fees?

19 A Correct.

20 Q Or report it as late on a credit report?

21 A Correct.

22 Q So why did BHS not foreclose on the property?

23 A We were directed by the Association to proceed
24 with foreclosure. We had sent a pre-foreclosure
25 letter, which is a requirement under the North Carolina

1 General Statutes prior to instituting a foreclosure.
2 That statute states that a foreclosure needs to be
3 filed within 30 days of the date -- excuse me, 45 days
4 of the date of that letter. We had sent the letter, I
5 want to say, on or about January 5th.

6 Approximately two weeks after we sent that
7 letter, we did perform a title search, which is
8 something that we do in anticipation of filing
9 foreclosure, but a new attorney representing Mr. Rose
10 reached out to us. And so whenever we have an
11 attorney, or even the individual homeowner for that
12 matter, reach out to us, we put everything on hold and
13 attempt to -- attempt to work it out without filing
14 foreclosure.

15 Q All right. And so -- but at this point, no
16 one, BHS, Presque, CAM -- none of those parties have
17 filed a lien -- I'm sorry, filed a foreclosure -- have
18 moved forward with a foreclosure, have they?

19 A Well, we sent the pre-foreclosure letter. Was
20 a notice of hearing filed? No.

21 MR. PERRY: Yeah, okay. So now we're
22 going to go -- and was that document admitted into
23 evidence? Thank you. Now we're going to go to the
24 10-21 -- I'm sorry, 2021-10-22 BHS Mail and Lien.
25 That's the next document.

**STACI GREEN'S DEPOSITION (PAGES
CITED)**

1 **A** Well, responsibility and payment are two
2 different things.

3 **Q** So you would say that the responsibility does
4 not include payment?

5 **A** It doesn't say it there, no.

6 **Q** Well, I'm asking what your opinion is. Do you
7 think that being responsible for the repair of the deck
8 would mean that you don't pay for it?

9 **A** Well, that's when we rely on advice of
10 counsel.

11 **Q** So did counsel tell you that it was not your
12 duty to pay for it?

13 **A** Well, it's ---

14 MR. RACINE: Objection.

15 **THE WITNESS:** It's indicated in the
16 chart.

17 **Q** (Mr. Perry) Well, we're talking about the
18 Declaration. Would you say that the Declaration
19 controls over that chart?

20 **A** The chart is a summary of the language in the
21 Declaration and state statute.

22 **Q** But if there was a conflict between that chart
23 and the Declaration, which would control?

24 MS. BARANYAI: Going to object. You're
25 asking for a legal conclusion here.

1 Q (Mr. Perry) Which would you follow?

2 A Well, if we're not sure, then we rely on the
3 advice of counsel.

4 Q Did you ask counsel about this?

5 A Yes.

6 Q And what did counsel tell you?

7 MR. RACINE: Objection.

8 MR. PERRY: You can answer.

9 MS. BARANYAI: I would say that one's
10 privileged ---

11 MR. PERRY: Okay.

12 MS. BARANYAI: --- communication between
13 attorney/client.

14 MR. PERRY: Sure. Okay.

15 I think that when she says that she relied on
16 advice of counsel, I think she's waiving privilege on
17 that. But -- so we'll ask for a supplement later if we
18 work that out.

19 MS. BARANYAI: Sounds good. Thank you.

20 MR. PERRY: Sure. I'm easy to get along
21 with. So we'll go to -- and that's marked ---

22 MS. BARANYAI: Don't answer. Sorry.

23 Sorry, I was just going to say you don't need to answer
24 that one. I didn't follow up. Sorry.

25 MR. PERRY: Sure. And, Madam Reporter,



1 A No.

2 Q Who is not a member of the Board or the
3 Association?

4 A So I believe Tom is the person referenced with
5 the roofing company, and Carl was a Board member. So
6 actually, I don't know the dates that any of them
7 began, so I can't speak to that either.

8 Q All right. Concerning Tom, and you said ---

9 THE WITNESS: Well, actually, can I
10 correct that?

11 MS. BARANYAI: Yes.

12 THE WITNESS: So when I look further
13 down -- so this is where it gets confusing. So on the
14 results of voting, it appears that Tom is a Board
15 member, and I was looking at the section above for roof
16 where that person's name is Tom as well. So let me
17 just clarify that, yes, all of those people who voted
18 are Board members.

19 Q (Mr. Perry) So Thomas McQueen was there, but
20 he's not listed under the attendees. Is that accurate?

21 A And so, again, I can't speak to -- I can speak
22 to who attended based on the attendees there, but I
23 can't speak to who left at what time because I wasn't
24 there. So it's possible that Carl and Thomas McQueen
25 left after the roof discussion, but I can't speak to

1 **BY MR. PERRY:**

2 Q I have a quick redirect after that. Do all of
3 the owners have keys to the clubhouse?

4 **A They should.**

5 Q So any owner can access that conference room.
6 Is that correct?

7 **A Depending on if it's locked or not locked.**

8 Q Do they have a key to the conference room?

9 **A Owners should not. I can't speak to that. I**
10 **don't know.**

11 Q Do you know whether the conference room stays
12 locked or not?

13 **A I believe -- well, again, I can't speak**
14 **directly to it. I don't know.**

15 Q Okay. That's good enough. Thank you.

16 MS. BARANYAI: Okay. Anybody --
17 anything else?

18 MR. RACINE: Not for me.

19 MS. BARANYAI: All right. Well, I
20 believe we're all finished up.

21
22 WHEREUPON, at 11:27 o'clock a.m., the
23 deposition was adjourned.
24
25

1 Q So does the letter state that the Association
2 has the authority to have the work done and bill the
3 owner \$4900 estimate provided?

4 A Can you enlarge it?

5 Q Scroll down.

6 A So it says the bid covers the cost of labor,
7 and it gives a range pending unforeseen problems, and
8 then the deadlines are reiterated again.

9 Q Okay. Did CAM or Presque have the authority
10 to do this?

11 A Yes.

12 Q Now, so --

13 MR. PERRY: -- you can take that off.

14 Q (Mr. Perry) Going to go to -- you know, I
15 should have had the Complaint, but I'll -- I don't
16 think you need to see it for this. I know I said I was
17 going to be fast enough. Not fast just now, but I will
18 be. Give me just a minute. Sorry.

19 MR. RACINE: While we're waiting, Shane,
20 you said you uploaded these exhibits.

21 MR. PERRY: Yeah.

22 MR. RACINE: Is there a -- is there a --
23 was there a link or something that was circulated? I
24 must have missed it.

25 THE COURT REPORTER: Do you want to go

